IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3753 OF 2006

Deepak Jhunjhunwala & another Applicants
versus
The Senior Inspector of Police
E.O.W. Unit-III and another Respondents

Mr.A.P.Mundargi i/by S.L.Wagh for applicants.
Smt.Mhatre, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 11th October 2006

PC :

1. It is not disputed before me that the applicants had applied for anticipatory bail before this Court in connection with CR No.11 of 2002 which is registered on 21st February 2002 alleging offences punishable under the Mumbai Municipal Corporation Act as also forgery and cheating punishable under IPC.. The anticipatory bail application preferred by these applicants was rejected. The matter was carried to the Supreme Court and there also the applicants lost. However, during the pendency of the application before this Court the applicants have attended on

the dates mentioned in para 5 of this application. In the mean while, since the dispute pertains to evasion of Octroi Duty, a representation to the Municipal Corporation for waiver and/or reduction of amount claimed as Octroi is made. The offence is registered for the facility granted or allegedly misused and that is how the BMC withdrew the exemption and levied octroi on the goods which were imported within the Municipal limits in accordance with the Octroi Rules under the BMC Act.

2. It is not disputed further that the applicants indeed surrendered as undertaken before me and their application in Case No.104/PW/2006 for regular bail was placed before the Additional Chief Metropolitan Magistrate, at Mumbai. The same was rejected and instead of approaching the learned Sessions Judge, the applicants have approached this Court.

3. I need not go into the submissions made by Shri Mundargi - learned Sr.Counsel with regard to approaching this Court directly. He contends that the learned Additional Sessions Judge to whom such applications are assigned, is of the view that unless the applicants-accused are

remanded to Magisterial Custody, they cannot prefer a bail application. In other words, upon magisterial custody only such application could be filed, is the view of learned Trial Court, according to Shri Mundargi. Since in this case such a view is not placed on record. The applicants have admittedly approached this Court directly. Hence, it is not necessary to go into this fact.

4. However, I have perused the order passed by learned Magistrate in Bail Application No.321 of 2006.

5. Mrs.Mhatre, learned APP after taking instructions, makes a statement that since the applicants are before the BMC who is considering their representation and an amount of Rs.2.50 lakh has already been paid in pursuance thereof, the Economic Offence Wing, Unit-III, Mumbai does not require custody of the applicants. In such circumstances, the applicants are enlarged on bail on the following conditions.

6. ORDER :-

(i) The applicants shall be enlarged on bail in

connection with C.R.No.11 of 2002 registered with Economic Offence Wing, Unit-III, Mumbai subject to furnishing a personal bond of Rs.50,000/- (Rs.Fifty thousand only) each by the applicants with one or two local sureties in the like sum;

(ii) The applicants shall report to Economic Offence Wing, Unit-III, Mumbai once in a fortnight till trial is concluded;

(iii) The applicants shall deposit their passports, if any, forthwith to Economic Offence Wing, Unit-III, Mumbai;

(iv) Additionally Shri Mundargi states that without prejudice to the rights and contentions of applicants and pending consideration of their request by the BMC, the applicants would deposit a sum of Rs.5.00 lakh (Rs.Five lakh only) with Municipal Corporation of Greater Mumbai subject of course to their remedies about the pending representation before the BMC. The amount would be paid within a period of four weeks from today;

(v) The applicants shall forthwith intimate their residential addresses to the investigating agency where they propose to reside after bail and

during pendency of trial. They shall not change their residence without prior intimation to the investigating authority;

(vi) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence;

(vii) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail;

(viii) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial;

(ix) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)